

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 10, 1999 at
9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 442, 3/4/1999
HB 522, 3/4/1999
HB 615, 3/4/1999
Executive Action: HB 442; HB 522

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 442

Sponsor: REP. JAY STOVALL, HD 16, BILLINGS

Proponents: Todd Daniels, Kessler Brewing, Helena
Dennis Himmelberger, Himmelberger Brewing Co.,
Billings
Tim O'Leary, Kettlehouse Brewing, Missoula
Brian Smith, Blackfoot River Brewing Co., Helena
Kristi Blazer, MT Beer & Wine Wholesalers Assoc.
Mark Staples, MT Taverns Assoc.
Randy Johnson, MT Grain Growers Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. JAY STOVALL, HD 16, BILLINGS. Today I bring you **HB 442**. Under current law, micro breweries can give their product away on the premise, but this bill would allow them to sell their samples on their premise. They will be limited to 48 ounces per person between the hours of 10 a.m. to 8 p.m. This is an economic bill for Montana. These Montana breweries use Montana grain and sell to Montanans. It is a win-win situation.

Proponents' Testimony:

Todd Daniels, Kessler Brewery Co., Helena, MT Brewers Assoc.
He read his testimony and handed in a copy **EXHIBIT (bus54a01)**.

Dennis Himmelberger, Himmelberger Brewing Co., Billings. I ask for your support on **HB 442** because it is a good bill for the state. Many hours were spent with the industry and they were able to reach a compromise with the MT Taverns Assoc. and the MT Wholesalers and MT Brewers. It helps to expand the economic base of Montana. Micro breweries are very popular across the country and many Americans plan vacations around visiting various breweries. I have been reluctant to promote visitation to my brewery through tourism because when they visit a brewery, they want samples. Under current law we have to give our samples away. As a small brewery, giving away samples can seriously affect your bottom line. I would be able to expand my brewing operation and more visitors would probably come to Montana as a result of this bill. It would encourage free enterprise and an entrepreneurial spirit. Montana laws pertaining to breweries have been on the books since the 1930's. It is time to update our laws. Thank you.

Tim O'Leary, Kettlehouse Brewery, Missoula. We are a four-year old brewery. We work long hours and are here today asking for your help to expand our business and to sell our own samples. Last year we sold 700 barrels of beer. We gave away 70 barrels of beer. When you are promoting a brand and build a brand,

people need to try your product. But when we have to give it away, it really hurts the bottom line. Thank you for your time.

Brian Smith, Blackfoot River Brewing Co., Helena. Forty-nine other states allow breweries to sell their product on their premise. Montana is the last on only one who doesn't. This allows small Montana breweries to sell their products on premise up to a maximum of 3 pints per day and within very limited hours. It is an economic freedom for breweries to do so. Some breweries give away quite a bit of product and customers expect that they can receive a sample. Not all breweries will take advantage of this. Many of the smaller ones will. At this point, we probably won't take advantage of this bill. But possibly at a later date, we might. It does give breweries the choice to use this tool to stay competitive. I urge your support of the bill.

Kristi Blazer, MT Beer & Wine Wholesalers Assoc. I was happy to have been part of the group that developed **HB 442**. I do want to thank all who took part in putting this bill together. It has appropriate limits in terms of the amount that can be sold to an individual customer and in terms of the hours that the breweries can sell their product. Thank you.

Mark Staples, MT Taverns Assoc. I also would thank all who were involved for coming together and compromising to put this bill together. I hope the committee would appreciate this fact. We support this bill and I hope that you will support it also.

Randy Johnson, MT Grain Growers Assoc. My members are producers of the finest malt barley in the world. There are members who are involved in building "Malt Montana" which we see as a malt house which will produce some of the finest malts in the world. We support this bill because we believe it will increase consumption of our barley and treat Montanans to yet another way of consuming our product. We would ask you to support this bill.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 11.6}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **REP. STOVALL** how this will be monitored. Do I write my name down and get check marks when I finish my 48 oz.? **REP. STOVALL** replied that in view of this bill, the brewers are going to monitor themselves so there won't be problems. Most people will try to comply with the law.

SEN. COCCHIARELLA asked **Mr. Staples** to respond to the same question. **Mr. Staples** said that these people are good people and if there is a breaking of the law, that will come out, no doubt about it. The Justice Department doesn't always have to go out and look for law breakers, someone usually turns them in.

SEN. BEA MCCARTHY asked **Todd Daniels** that if she sampled the beers first and then purchased a keg to take home, would there be a problem? **Mr. Daniels** said that this bill only pertains to samples consumed on the premises, not what could be purchased for consumption some place else.

SEN. COCCHIARELLA said that there seems to be a problem on line 18 and the language which is stricken from the bill. **Mr. Bart Campbell, Legislative Assistant**, said that it is a complete sentence and explained it.

SEN. JOHN HERTEL asked **Mr. Staples** to look at line 29 and where 60,000 barrels are mentioned. Then on line 21, 10,000 barrels are mentioned. Is there a conflict? **Mr. Staples** said he did not believe they were in conflict. The 10,000 barrel definition is a definition of a small brewery that can engage in the sales that are spoken of in the bill. The 60,000 barrel definition is a brewery that has to have a micro brewery license. **Kristi Blazer** offered her answer. She said the 60,000 was left on purpose because that is a federal number and it is also a number by which a brewer has to go through a wholesaler for certain sales. They wanted to leave that alone. For informational purposes, there are no small brewers in Montana currently that sell more than 10,000 barrels a year. That particular type of brewery does not exist between the 10,000 and the 60,000 limit. If that brewer should exist, that brewer would not be entitled to the sample room exception.

Closing by Sponsor:

REP. STOVALL closed. This is a good bill for all concerned. I appreciate everyone who worked on the bill. I hope you would look favorably on **HB 442**. **SEN. SPRAGUE** will carry the bill on the Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 19.7}

HEARING ON HB 522

Sponsor: **REP. ROBERT J. "BOB" PAVLOVICH, HD 37, BUTTE**

Proponents: Kristi Blazer, MT Beer & Wine Wholesalers Assoc.
Steve Browning, Anheuser-Busch Brewery
Neil Peterson, Customer Services, Dept. of Revenue

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT J. "BOB" PAVLOVICH, HD 37, BUTTE. House Bill 522 is a clean up bill designed to clean up the unnecessary and possibly unconstitutional language in MCA 16-3-230. This bill is concerned with the three tier system where the breweries bring in the beer, the wholesalers deliver it to the retailers and the retailers sell to the consumer. This makes it a good, strong three tier system which 38 other states have the same system.

Proponents' Testimony:

Kristi Blazer, MT Beer & Wine Wholesalers Assoc. She read her testimony and handed in the written copy **EXHIBIT (bus54a02)**.

Steve Browning, Anheuser/Busch Co. We support this bill as an out-of-state brewer. Anheuser/Busch produces by far the most beer of any other brewer in the world. They buy from Montana in excess of 15 million bushels of malt barley each year. They are by far the largest consumer of that product from Montana growers. We encourage your support.

Neil Peterson, Administrator, Customer Service Center, Department of Revenue. We think this bill is a good bill because it provides for consistent treatment of in-state and out-of-state brewers.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JOHN HERTEL asked REP. PAVLOVICH that beer coming from out of state must come to a wholesaler first and not directly to a retailer and then those records can be checked any time? REP. PAVLOVICH answered "yes".

Closing by Sponsor:

REP. PAVLOVICH closed. Thank you for a good hearing. SEN. MCCARTHY will carry the bill on the Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 25.3}

HEARING ON HB 615

Sponsor: REP. DAN W. HARRINGTON, HD 38, BUTTE

Proponents: Pete Decker, Billings
Chad Godbout, Mile High Beverages, Inc.
Ralph Nellis, Intermountain Distributing Co.,
Billings
Robert Zucconi, Zeke's Distributing Co., Helena
Kristi Blazer, MT Beer & Wine Wholesalers Assoc.

Opponents: Mona Jamison, Wine Institute

Opening Statement by Sponsor:

REP. DAN W. HARRINGTON, HD 38, BUTTE. He presented his opening and handed in the written copy **EXHIBIT**(bus54a03).

Proponents' Testimony:

Pete Decker, Billings. I am a retired owner of Briggs Distributing Company. We have been a Millers distributor since 1967. I am here in place of my son because he is in bed for a degenerative disc in his back. I have not been active in the business and I would like to read a letter that he wrote to Karen Ripley, Senior Assistant General Counsel for Miller Brewing Co. and I would also like to read a FAX from Kelly Grebe from Miller Brewing **EXHIBIT**(bus54a04). Several distributors have traveled back and forth from Chicago to Billings and have spent approximately \$15,000 in those two months arguing their position. This issue is not confined only to breweries. The wineries have the same situation. Thank you.

Chad Godbout, Mile High Beverages, Inc., Butte. He explained the chronology of his problem with Miller and handed in this chronology **EXHIBIT**(bus54a05).

{Tape : 1; Side : B; Approx. Time Counter : 0; Comments : For unknown reasons there is no recorded material on Side B. The following is a reconstruction of the hearing on HB 615.}

Ralph Nellis, Billings. He was an older gentleman from Billings who gave a short testimony in favor of the bill.

{Tape : 1; Side : B; Approx. Time Counter : 3.1}

Robert Zuconni, Zeke's Distributing Co., Helena. He gave his testimony in favor of the bill and introduced an exhibit **EXHIBIT (bus54a06)** that showed a contract with a wine manufacturer and the limitations of their contract that would hold a distributor to litigation in the State of Washington and other rules and guidelines.

{Tape : 1; Side : B; Approx. Time Counter : 4.1}

Kristi Blazer, MT Beer & Wine Wholesalers Assoc. She gave her testimony and handed in the written copy **EXHIBIT (bus54a07)**. She also handed in a Bill Drafting Request **EXHIBIT (bus54a08)** that shows what the sponsor requested in this particular bill: (1) interpretation: the agreements are to be interpreted according to Montana law; (2) forum: disputes are to be litigated in Montana; (3) right to jury trial: wholesalers or distributors cannot be forced to waive their right to a jury trial.

{Tape : 1; Side : B; Approx. Time Counter : 6.6}

Opponents' Testimony:

Mona Jamison, Wine Institute. She said that a contract is a contract and if a person enters into one willingly the state should not revise their laws to nullify the contract. She also felt that the problems that were presented in testimony were against the beer manufacturers rather than the wineries and didn't feel that wineries should be included in the bill.

{Tape : 1; Side : B; Approx. Time Counter : 16.6}

Questions from Committee Members and Responses:

There were questions from **SEN. COCCHIARELLA** for **Steve Browning**.

{Tape : 1; Side : B; Approx. Time Counter : 20.1}

There were questions from **SEN. SPRAGUE** for **Ms. Jamison** and **Ms. Blazer**.

{Tape : 1; Side : B; Approx. Time Counter : 24.2}

There were questions from **SEN. MCCARTHY** for **Mr. Godbout** and **Ms. Blazer**.

{Tape : 1; Side : B; Approx. Time Counter : 31}

There was a question from **SEN. HERTEL** fro **Ms. Blazer**. There was a question from **SEN. MCCARTHY** for **REP. HARRINGTON**.

{Tape : 1; Side : B; Approx. Time Counter : 34.5}

There were questions from **SEN. SPRAGUE** for **Ms. Jamison**.

{Tape : 1; Side : B; Approx. Time Counter : 39.3}

Closing by Sponsor:

REP. HARRINGTON closed. **SEN. BOB KEENAN** will carry the bill on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 522

Motion/Vote: **SEN. MCCARTHY** moved that HB 522 BE CONCURRED IN. Motion carried unanimously. 6-0

SEN. MCCARTHY will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 442

Motion/Vote: **SEN. SPRAGUE** moved that HB 442 BE CONCURRED IN. Motion carried unanimously. 6-0

SEN. SPRAGUE will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HB 153

Motion: **SEN. COCCHIARELLA** moved that HB 153 BE removed from the TABLE. Motion carried unanimously. 6-0

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus54aad)